

REMARKS

Claims 1 - 8 are pending in the application. Claims 1, 2, 5, 6 and 8 have been amended as above.

Reconsideration of the present Application in light of submitted amendments and the following remarks is requested.

The following issues are outstanding in the Office Action dated November 6, 2002.

--Claims 1 - 3 and 5 - 8 have been rejected under 35 U.S.C. Section 102(e) as being anticipated by Miller (U.S. Patent No. 6,421,928).

--Claim 4 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Miller.

Applicant hereby traverses the outstanding rejections and requests reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

Claims 1-3 and 5-8 were rejected as unpatentable over Miller (U.S. Patent No. 6,421,928). Miller '928 teaches a marking device having two projected tabs 66 moveable along a slot 26 in a frame 12. The device of Miller requires two moveable tabs. In use, both tabs are moved away from a center zero point. However, the present invention as disclosed and claimed only requires movement of a single projected tab. The other projected tab is fixed at the zero point. This arrangement as claimed in independent Claims 1 and 5 simplifies use and manufacture of the device. For example, in the present device, as soon as the projected tabs are aligned in holes (as in Fig. 3 for example) the dimension between the holes can be read from the scale. With the Miller device the projected device would be aligned in the holes (see Fig. 4 of the Miller patent) and then the scale must be slid back and forth until the numbers displayed in both tab windows equal. This is one example of where the Miller device becomes more complicated to use.

Claims 2 and 6 further point out that the fixed tab is also the zero point for the device. The Miller patent does not disclose the concept of using a fixed projecting tab, nor does Miller disclose using one of the projecting tabs as a zero point on the scale. The arrangement of Miller requires the user to add together the two markings to get the total distance between the holes, this is simple with whole numbers, but more difficult and time consuming with fractions. For these reasons, it is felt that the current claims are allowable over Miller and all the patents of record. Applicant also calls the Examiner's attention to the fact that the invention is in a crowded art.

Claim 4 was rejected over Miller, but is dependent upon Claims 1 and 2 which are now allowable as shown above.

For these reasons above, it is felt that the pending claims as amended, distinguish beyond any of the prior references individually or in combination and are now in condition for allowance. Reconsideration and an early allowance of the Application as amended, is requested.

Attached please find Applicant's "Version With Markings To Show Changes".

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE**IN THE CLAIMS:**

Claims 1, 2, 5, 6 and 8 have been amended as follows:

1. (Amended) A leveling and marking tool for mounting an items having pre-cut mounting holes to a wall, and for making indenting marks in the wall that are in spaced apart relationship to match the pre-cut mounting holes of the item to be mounted, the leveling and marking tool comprising:

a frame having a front surface, a back surface, a lengthwise opening, a first projected tab mounted in a fixed hole at an end of the frame on the same axis as the lengthwise opening, a second projected tab moveable in an axial direction along the lengthwise opening, threadable locking means for fixing the second projected tab in selected locations along the lengthwise opening spaced longitudinally from the first projected tab at a distance corresponding to the distance between the pre-cut mounting holes, the first and second projected tabs each having a conical point that outwardly projects from the back surface of the frame, at least one bubble gauge mounted to the frame, and means associated with the first projected tab and the second projected tab for accurately indenting said marks in the wall.

2. The tool as recited in Claim 1, wherein the conical point of the first projected tab and the conical point of the second projected tab outwardly project an equal distance from the back surface of the frame and wherein the frame includes a printed reference scale with the fixed hole serving as a zero point on the printed reference scale.

5. A leveling and marking tool for mounting an item having pre-cut mounting holes to a wall, and for making marks in ~~on~~ the wall that are in spaced apart relationship to match the pre-cut mounting holes of the item to be mounted, the leveling and marking tool comprising:

a frame having an axis, a first projected tab mounted in a fixed hole at an end of the frame on the axis, a second projected tab moveable in an axial direction along the frame, locking means for fixing the second tab in selected locations along the frame spaced from the first projected tab corresponding to a distance between the pre-cut mounting holes, a leveling gauge on said frame and means associated with the first and second projected tabs for making said marks in a spaced and level relationship on said wall such that the mounting holes for said item can be installed at said marks.

6. The marking and leveling tool as recited in Claim 5, wherein the first and second projected tabs each include a conical point such that said marks are indented into the wall by applying pressure and wherein the frame includes a printed reference scale with the fixed hole serving as a zero point on the reference scale.
8. The marking and leveling tool as recited in Claim 5, wherein the locking means includes threads and passes through a longitudinal slot in the frame and wherein said fixed hole is a threaded hole.

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